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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Docket No. RCRA-08-2006-0007

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Veolia ES Technical Solutions, LLC, ) **COMPLAINT, COMPLIANCE ORDER,**  
) **AND NOTICE OF OPPORTUNITY FOR**  
Respondent. ) **HEARING**

**INTRODUCTION**

1. This civil administrative enforcement action is authorized by Congress in section 3008(a) of the Solid Waste Disposal Act, also known as the Resource Conservation Recovery Act, as amended (RCRA or the Act), 42 U.S.C. § 3008(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" (Rules of Practice), 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials (Complainants) have been properly delegated the authority to issue this complaint and compliance order.

3. EPA alleges that Veolia ES Technical Solutions, LLC (Respondent) has violated the Act and the federally-authorized State of Colorado regulations, 6 CCR 1007-3, proposes the assessment of a civil penalty, and issues a proposed compliance order, as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to request a public hearing before an administrative law judge (ALJ) on any material fact alleged in the complaint or on the appropriateness of any proposed penalty.

5. To disagree with the complaint and assert its right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, 999 18th Street, Suite 200 (8RC), Denver, CO 80202, within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY/COMPLIANCE ORDER, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

## SETTLEMENT NEGOTIATIONS

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Thomas E. Sitz, Enforcement Attorney, at 303-312-6918 (or 1-800-227-8917, extension 6918) or the address below. **Please note that calling Mr. Sitz or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

## GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this complaint, and to each count of this complaint:

7. EPA has jurisdiction of this matter under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and may enforce federally-authorized state hazardous waste program requirements.

8. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), effective November 2, 1984, EPA granted the State of Colorado (the State) final authorization to administer and enforce state hazardous waste program requirements in lieu of the federal program requirements. All references in this complaint to Colorado regulations are those regulations authorized by EPA under Section 3006(b) of RCRA. See 49 FR 41036 (October 19, 1984), 51 FR 37729 (October 24, 1986), 54 FR 20847 (May 15, 1989), 56 FR 21601 (May 10, 1991), 59 FR 16568 (April 7, 1994), and 68 FR 64550 (November 14, 2003).

9. The RCRA Export regulations (40 C.F.R. part 262, subpart E) are administered by EPA, not the states, since foreign policy interests and exporters' interests in expeditious processing are better served by EPA retaining these functions. 51 FR 28678 (August 8, 1986).

10. Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given notice of this action to the State.

11. Respondent is a limited liability company formed or registered under the law of the State of Delaware with its principal place of business at 700 E. Butterfield Rd, Lombard, Illinois, 60148.

12. Respondent is a "person" as defined in section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 6 CCR 1007-3, § 260.10, and thus is subject to regulation under RCRA.

13. The State of Colorado issued RCRA Part B permit No. CO 04-06-30-01 to Respondent addressing Respondent's Henderson, Colorado facility (EPA identification # COD980591184). From at least April 24, 2003 through on or about July 23, 2006, Onyx Environmental Services, LLC was the permittee. Effective on or about July 24, 2006, Onyx Environmental Services, LLC changed its name to Veolia ES Technical Solutions, LLC.

14. "Hazardous waste" is defined in 6 CCR 1007-3, § 261.3.

### **Count 1**

15. 6 CCR 1007-3, § 262.56(a) requires exporters who originate the shipping manifest to file a report with EPA no later than March 1 of each year. This annual report must summarize the types, quantities, frequencies, and ultimate destination of all hazardous waste exported during the previous calendar year. In particular, 262.56(a)(4) requires for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste numbers, and the total amount of wastes shipped.

16. Respondent's 2003 Annual RCRA Hazardous Waste Export Report only reported 5 of the 42 hazardous wastes actually exported by Respondent during that reporting period, in violation of 6 CCR 1007-3, § 262.56(a).

### **Count 2**

17. 6 CCR 1007-3, § 262.56(a) requires exporters who originate the shipping manifest to file a report with EPA no later than March 1 of each year.

18. Respondent's 2004 Annual RCRA Hazardous Waste Export Report, dated August 17, 2005, was filed with EPA, at least 165 days late, in violation of 6 CCR 1007-3, § 262.56(a).

### **Count 3**

18. 6 CCR 1007-3, § 262.55(a) requires the exporter who originated the shipping manifest to file an exception report with EPA if he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter.

19. Respondent originated two export shipments to Canada in 2003 where the transporter failed to sign and indicate the date of departure from the United States (manifests # 68529 and 68320), thus triggering Respondent's obligation to submit the 6 CCR 1007-3, § 262.55(a) exception reports.

20. As of May 12, 2006, Respondent had not filed exception reports for either of the two 2003 manifests (# 68529 and 68320) that were not signed or dated at the time of departure from the US., in violation of 6 CCR 1007-3, § 262.55(a).

### **PROPOSED CIVIL PENALTY**

21. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes EPA to assess a penalty of up to \$27,500 per day for each violation of the Act occurring between January 30,

1997 and March 15, 2004. See the Civil Monetary Penalty Inflation Adjustment Rule at 69 Federal Register 7121, 7126 (February 13, 2004). Section 3008(a)(3) of RCRA also requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the statutory and regulatory requirements in assessing a civil penalty. The penalty proposed below takes into account the statutory factors and was calculated in accordance with EPA's June 2003 RCRA Civil Penalty Policy (as amended January 11, 2005). EPA uses this penalty policy to provide a rationale and consistent application of the statutory factors to the facts and circumstances of a specific case.

22. In light of the statutory factors and the specific facts of this case, Complainants propose that Respondent be assessed a civil penalty of **six thousand nine hundred dollars (\$6,900)** for the violations alleged in this complaint. The reasoning behind this proposed penalty is detailed in the penalty narrative and penalty calculation worksheet (Attachments 1 and 2) which are incorporated herein by reference.

23. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainants, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the Act.

### COMPLIANCE ORDER

24. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and in light of the above allegations, Respondent is hereby ORDERED to:

- a) file an amended annual report for 2003 to reflect all of the hazardous wastes that were exported that year, a description of the hazardous wastes, the EPA hazardous waste numbers, and the total amount of wastes shipped; and
- b) file exception reports for the two 2003 manifests (# 68529 and 68320) that were not signed or dated at the time of departure from the United States.

These submittals shall be filed within 30 days of the effective date of this Order, correcting the violations alleged above. The exception reports and amended annual report shall be submitted to:

Eric R. Johnson  
Environmental Scientist  
Technical Enforcement Program (8ENF-RC)  
U.S. Environmental Protection Agency, Region 8  
999 18<sup>th</sup> Street, Suite 200  
Denver, CO 80202-2466

and

Robert G. Heiss, Director  
International Compliance Assurance Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building (2254A)  
1200 Pennsylvania Street, N.W  
Washington, DC 20460

25. To discuss settlement or ask any questions you may have about this process, please contact:

Thomas E. Sitz  
Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
999 18<sup>th</sup> Street, Suite 200 (ENF-L)  
Denver, CO 80202-2466  
303-312-6918  
sitz.thomas@epa.gov

Date: 28 September 2006 By: Sharon L. Kercher  
Sharon L. Kercher, Director  
Technical Enforcement Program

Date: 29 September 2006 By: David J. Janik  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program

**ATTACHMENT 1**  
**NARRATIVE EXPLANATION TO SUPPORT \$6,900 PENALTY FOR:**  
**VEOLIA ES TECHNICAL SOLUTIONS, LLC**

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA proposes the assessment of a civil penalty in the amount of \$6,900 against Veolia ES Technical Solutions, LLC (formerly d/b/a Onyx Environmental Services) ("Respondent") for the following violations:

**VIOLATION - 1**

The Respondent violated State of Colorado Hazardous Materials and Solid Waste Regulations 1007-3, § 262.56(a)(4) by failing to include in its' 2003 Annual RCRA Hazardous Waste Export Report ("Report") a description of all hazardous wastes exported, the EPA hazardous waste numbers, and total amount of wastes shipped. [5 out of 42 wastes were reported; 12%]

1. Gravity Based Penalty: \$2,901

Potential for Harm: Minor - Respondent's failure to include a description of all hazardous wastes exported, the EPA hazardous waste numbers, and total amount of wastes shipped in its' Report constitutes a minor harm to the integrity of the RCRA program. A list of each waste to be exported was provided with shipping papers to the receiving facility (Custom Environmental Services) in Edmonton, Canada. Respondent also notified EPA of its' intention to export these wastes before such wastes were scheduled to leave the United States (consent was granted by Environment Canada, in accordance with the U.S./Canada Bilateral Agreement).

Extent of Deviation: Major - By failing to include 88% of the hazardous wastes exported in its' Report, the Respondent substantially deviated from the regulatory requirements. The RCRA hazardous waste annual reporting requirements are essential to EPA to reveal exporters who may have exceeded allowable quantities or types of waste, and/or who have failed to notify the Agency of an export.

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a range of penalty amounts in the minor potential for harm/major extent of deviation category. The penalty amounts range from \$1,934 to \$3,868 for the first-day gravity-based component. This violation was assessed \$2,901 for the first-day gravity-based penalty.

## 2. Multiple/Multi-day Penalty

The information currently available to EPA does not justify the use of a multiple or multi-day penalty.

## 3. Adjustment Factors

The information currently available to EPA does not justify use of discretionary adjustment factors to modify the assessed penalty amount. No evidence has been produced which indicates either the demonstration, or lack of good faith, willingness, negligence, or a history of noncompliance with respect to the same violation.

## 4. Economic Benefit

The Facility appears to have gained no economic benefit from this violation; i.e., the benefit, if any, was less than \$2,500.

## 5. Penalty

\$ 2,901

## VIOLATION - 2

The Respondent violated State of Colorado Hazardous Materials and Solid Waste Regulations 1007-3, § 262.56(a) by failing to file the 2004 Annual RCRA Hazardous Waste Export Report ("Report") by March 1, 2005. [168 days late]

### 1. Gravity Based Penalty: \$387

Potential for Harm: Minor - Respondent's failure to timely file a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the year 2004 constitutes a minor harm to the integrity of the RCRA program. When an Annual RCRA Hazardous Waste Export Report is not available to EPA for review, the Agency must expend additional resources to verify that the wastes were exported properly.

Extent of Deviation: Minor - By failing to file the 2004 Report by March 1, 2005, the Respondent deviated somewhat from the regulatory requirements, but most aspects of the requirement were met (a complete Report was eventually submitted to EPA 168 days late).

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a range of penalty amounts in the minor potential for harm/minor extent of deviation

category. The penalty amounts range from \$129 to \$644 for the first-day gravity-based component. This violation was assessed \$387 for the first-day gravity-based penalty.

2. Multiple/Multi-day Penalty: \$3,096

A multi-day (week) penalty was assessed for a total period of 24 weeks of violation of these regulations (25 weeks of violation minus one (1)). The Respondent was found to be in violation of annual hazardous waste export reporting aspects of the RCRA program. This violation occurred for 25 weeks between the time period March 1, 2005 through August 17, 2005.

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a fixed penalty amount in the minor potential for harm/minor extent of deviation multiple/ multi-day category. The penalty amount is \$129. Multi-day penalties are discretionary for all days of all violations designated minor/minor. This violation was assessed using \$387 for the gravity based penalty and \$129 for the multi-day penalty. The multi-day penalty was calculated as follows: 24 weeks (168 days) of violation x \$129 = \$3,096.

3. Adjustment Factors

The information currently available to EPA does not justify use of discretionary adjustment factors to modify the assessed penalty amount. No evidence has been produced which indicates either the demonstration, or lack of good faith, willingness, negligence, or a history of noncompliance with respect to the same violation.

4. Economic Benefit

The Facility appears to have gained no economic benefit from this violation; i.e., the benefit, if any, was less than \$2,500.

5. Penalty

\$ 3,483

**VIOLATION - 3**

The Respondent violated State of Colorado Hazardous Materials and Solid Waste Regulations 1007-3, § 262.55(a) by failing to submit exception reports for two shipments (2 manifests) that were missing the date hazardous waste left the United States to a foreign source (Canada).

1. Gravity Based Penalty: \$387



Potential for Harm: Minor - Respondent's failure to submit exception reports for two shipments (2 manifests) that were missing the date hazardous waste left the United States constitutes a minor harm to the integrity of the RCRA program. By submitting exception reports within the specified time frame for those off-site waste shipments for which no date is indicated hazardous wastes left the United States, facilities demonstrate to EPA that they are properly managing their wastes from cradle-to-grave, and properly implementing the self-reporting aspects of the RCRA requirements. The Respondent's failure to submit an exception report within the specified time frame has a minor adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

Extent of Deviation: Minor - By failing to submit exception reports within the specified time frame, the Respondent deviated somewhat from the regulatory requirements. Based on manifests and shipping papers reviewed during EPA's May 12, 2006 facility inspection, the Respondent has complied with waste tracking requirements from cradle-to-grave most of the time.

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a range of penalty amounts in the minor potential for harm/minor extent of deviation category. The penalty amounts range from \$129 to \$644 for the first-day gravity-based component. This violation was assessed \$387 for the first-day gravity-based penalty.

## 2. Multiple/Multi-day Penalty: \$129

A multi-day penalty was assessed for a total period of one (1) day of violation of these regulations (2 days of violation minus one (1)). The Respondent was found to be in violation of self-reporting aspects of the RCRA requirements. This violation was found on two (2) manifests for two (2) days on April 24, 2003 and August 22, 2003.

The January 11, 2005 Revised Penalty Matrices for the RCRA Civil Penalty Policy (June 2003) provides a fixed penalty amount in the minor potential for harm/minor extent of deviation multiple/ multi-day category. The penalty amount is \$129. Multi-day penalties are discretionary for all days of all violations designated minor/minor. This violation was assessed using \$387 for the gravity based penalty and \$129 for the multi-day penalty. The multi-day penalty was calculated as follows: 1 day (2 days of violation minus one) of violation x \$129 = \$129

3. Adjustment Factors

The information currently available to EPA does not justify use of discretionary adjustment factors to modify the assessed penalty amount. No evidence has been produced which indicates either the demonstration, or lack of good faith, willingness, negligence, or a history of noncompliance with respect to the same violation.

4. Economic Benefit

The Facility appears to have gained no economic benefit from this violation; i.e., the benefit, if any, was less than \$2,500.

5. Penalty

\$ 516

**TOTAL PENALTY FOR ALL VIOLATIONS: \$6,900**

PREPARED BY:

*Eric R. Johnson*  
Eric R. Johnson  
Environmental Scientist  
Technical Enforcement Program

9/28/06  
Date

**ATTACHMENT 2**  
**PENALTY COMPUTATION WORKSHEET**

Company Name: Veolia ES Technical Solutions, LLC  
(formerly d/b/a Onyx Environmental Solutions)  
Company Address: 9131 East 96<sup>th</sup> Avenue  
Henderson, Colorado

VIOLATION 1

Regulation Violated: CDPHE Hazardous Materials and Solid  
Waste Regulation 1007-3, § 262.56(a)(4)  
Requirement Violated: Failure to include in the 2003 Annual  
Export Report a description of all  
hazardous wastes exported, the EPA  
hazardous waste numbers, and total  
amount of wastes shipped. [5 out of 42  
wastes were reported; 12%]

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix..... \$2,901
  - (a) Potential for harm..... minor
  - (b) Extent of deviation..... major
2. Select an amount from the appropriate multi-day  
matrix cell..... N/A
3. Multiply line 2 by number of days of violation  
minus 1..... N/A
4. Add line 1 and line 3..... \$2,901
5. Percent decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance... N/A
8. Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount to be  
inserted into the complaint..... \$2,901

**ATTACHMENT 2**  
**PENALTY COMPUTATION WORKSHEET**

Company Name: Veolia ES Technical Solutions, LLC  
(formerly d/b/a Onyx Environmental Solutions)  
Company Address: 9131 East 96<sup>th</sup> Avenue  
Henderson, Colorado

VIOLATION 2

Regulation Violated: CDPHE Hazardous Materials and Solid  
Waste Regulation 1007-3, § 262.56(a)  
Requirement Violated: Failure to file the 2004 Annual Export  
Report to EPA by March 1, 2005.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix..... \$387
  - (a) Potential for harm..... minor
  - (b) Extent of deviation..... minor
2. Select an amount from the appropriate multi-day  
matrix cell..... \$129
3. Multiply line 2 by number of days (weeks) of violation  
minus 1..... \$129 x 24  
= \$3,096
4. Add line 1 and line 3..... \$3,483
5. Percent decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance... N/A
8. Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount to be  
inserted into the complaint..... \$3,483

**ATTACHMENT 2**  
**PENALTY COMPUTATION WORKSHEET**

Company Name: Veolia ES Technical Solutions, LLC  
(formerly d/b/a Onyx Environmental Solutions)  
Company Address: 9131 East 96<sup>th</sup> Avenue  
Henderson, Colorado

VIOLATION 3

Regulation Violated: CDPHE Hazardous Materials and Solid  
Waste Regulation 1007-3, § 262.55(a)  
Requirement Violated: Failure to submit timely exception  
reports for two manifests missing the  
date hazardous waste left the United  
States

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix..... \$387
  - (a) Potential for harm..... minor
  - (b) Extent of deviation..... minor
2. Select an amount from the appropriate multi-day  
matrix cell..... \$129
3. Multiply line 2 by number of days of violation  
minus 1.....  $\$129 \times 1$   
= \$129
4. Add line 1 and line 3..... \$516
5. Percent decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance... N/A
8. Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount to be  
inserted into the complaint..... \$516

IN THE MATTER OF: Veolia ES Technical Solutions, LLC  
DOCKET NUMBER: RCRA-08-2006-0007

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that the original and one copy of the Complaint in the above-referenced matter was hand-carried to:

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. Environmental Protection Agency, Region 8  
999 18th Street, Suite 200  
Denver, Colorado 80202-2466

and that a true copy of the same was sent via USPS certified mail, return receipt requested (article # 7005 0390 0000 4847 6236), along with a copy of EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, to:

The Corporation Company  
Registered Agent for  
Veolia ES Technical Solutions, LLC  
1675 Broadway  
Denver, CO 80202

Date: September 29, 2006 Dayle De Arvil  
Dayle De Arvil